IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Appeal No.363 of 2000
Reserved on: 26.10.2007.
Decided on:October 29 , 2007.

State of H.P. **…Appellant.**

VERSUS

Yash Paul & others **….Respondents.**

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant: **Mr.M.L.Chauhan, Addl.A.G.**

For the respondents: **Mr.Vinay Thakur, Advocate.**

Kuldip Singh, Judge

The State by way of this appeal has assailed judgment of acquittal dated 26.2.2000 passed by the learned Sub Divisional Judicial Magistrate, Rampur Bushahr, District Shimla in case No. 49-II of 99 acquitting the respondents under Sections 452, 323, 506 read with Section 34 IPC.

2. The facts in brief are that respondents allegedly in furtherance of their common intention criminally trespassed into the house of Yusuf to dispossess him from his land on 7/8-12-1998 at about 12.30 midnight at place Badhal. Yusul allegedly purchased the land from Kalu Ram and respondents are sons and grand sons of said Kalu Ram. It has been alleged that Yash Paul gave danda blow on the person of complainant when the complainant was sitting in his

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Whether the reporters of the local papers maybe allowed to see the judgment? Yes

kitchen with his family members, other respondents were also having dandas in their hands. On this , FIR No. 147 of 98 was registered at Police Station, Jhakri. The police investigated the case and ultimately put up challan against the respondents in the Court. The respondents were charged under Sections 452,323, 506 read with section 34 IPC to which they pleaded not guilty and claimed trial. The prosecution examined six witnesses. The statements of respondents were recorded under Section 313 Cr.P.C., they denied the prosecution case but have not led any evidence in defence. The trial Court acquitted the accused, hence the State is in appeal.

3. I have heard the learned Additional Advocate General for the State and Mr. Vinay Thakur, Advocate representing the respondents. It has been submitted on behalf of the State that prosecution has proved the case against the respondents beyond reasonable doubt. The trial Court has mis-construed and mis-interpreted the material on record and has erred in acquitting the respondents. The learned counsel for the respondents has supported the impugned judgment.

4. PW1 Yusuf has stated that about 13-14 years ago he purchased 2-2 bighas of land from Kalu at place Badhal vide registered sale deed Ex.PW1/A, but this land was not actually handed over to him. He has further stated that ten months ago at about 12.00 he was sitting in his kitchen alongwith Meer Sen/Hamir Hussain/Amir Hussain and his family. The respondents and Kalu Ram entered his kitchen and gave danda blow to him and Yash Paul gave blow on his

head. He was saved by his family members. They remained in his house for about 45 minutes. Hamir Hussain, a guest was also present on the spot. He reported the matter to the police vide FIR Ex.PW1/B. In cross-examination he has admitted that danda with which he was given the beatings was not shown to him. Only one danda blow was given on his head as a result of which blood oozed out and fell on the clothes also. He has admitted that Jamal Din and Dugru Ram are his neighbours. PW2 Sher Ali has stated that on 8.12.1998 he and Hamir Hussain had gone to the house of Yusuf. At about 12.30 midnight they were eating meals in the kitchen, Yash Paul came there by breaking open the door and gave a danda blow on the head of Yusuf, others were also having dandas in their hands. They remained in the house of Yusuf till 1.00 A.M. PW3 Dr. Anupam Gupta examined Yusuf on 8.12.1998 and issued MLC Ex.PW3/A. In cross-examination he has stated the injuries can be caused by fall. PW4 Chet Ram, Secretary Gram Panchayat is a formal witness. PW5 Hamir Hussain has denied that anything occurred in his presence. He was declared hostile. The prosecution cross-examined him but in cross-examination he has denied that on 7.12.1998 at 12.30 midnight respondents came to the house of Yusuf and gave beatings with dandas. PW5 HC Prakash Chand and PW6 HC Suraj Prakash are formal witnesses. The respondents-accused in their statements under Section 313 Cr.P.C. denied the prosecution case.

5. The complainant Yusuf has stated that occurrence took place at about 12.00 night when he was sitting with his family

alongwith Meer Sen/Hamir Hussain in the kitchen. He stated that he was given beating by the respondents and on his head blow was given by Yash Paul. In his statement he has stated that Hamir Hussain, his guest was also present on the spot. He has not stated that Sher Ali was present on the spot. PW2 Sher Ali claimed his presence on the spot and he has stated that at about 12.30 midnight they were eating meals in the kitchen of Yusuf when Yash Paul broke open the door and gave danda blow on the head of Yusuf. PW1 Yusuf has not stated that they were eating their meals in the kitchen nor he has stated that Yusuf entered the kitchen by breaking open the door. There are material contradictions in the statements of PW1 and PW2 regarding the manner the occurrence took place. PW5 Hamir Hussain has not supported the prosecution case even though PW1 complainant has stated that he was present on the spot. PW3 Dr. Anupam Gupta has stated that the injuries on the person of complainant could be caused by fall. The blood stained clothes of PW1 were not produced during trial by prosecution. Mst. Najri wife of Yusuf who was allegedly sitting with him at the time of occurrence has also not been examined. The learned Sub Divisional Judicial Magistrate has rightly appreciated the material on record and has taken a possible view by acquitting the respondents. No case for interference has been made out, hence, the appeal is dismissed.

October 29, 2007. ***(Kuldip Singh), J.***

(vs)